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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,877	08/27/2003	Philip F. Valenziano	1342-001	4891
47888	7590	03/25/2005		
HEDMAN & COSTIGAN P.C. 1185 AVENUE OF THE AMERICAS NEW YORK, NY 10036			EXAMINER HARRIS, ANTON B	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/648,877

Applicant(s)

VALENZIANO, PHILIP F.

Examiner

Anton B. Harris

Art Unit

2831

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2003.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 14 November 2003.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 3 is objected to because of the following informalities:

At claim 3 line 1 it recites "Claim 1wherein". It should be "Claim 1 wherein".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 4-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrenfels (4,243,835 cited by Applicant).

Regarding claim 1, Ehrenfels (abstract) discloses a fire retardant poke-through fitting comprising:

a. a conduit body comprising:

- i. a conduit 30,
- ii. a fixed flange 34,
- iii. a slidable flange 40, and

b. an intumescent member 44 formed at least in part of an intumescent material (col. 4, lines 40-45), said intumescent member 44 comprising an aperture (figure 1) corresponding to the

Art Unit: 2831

conduit 30 and a retention member 36, wherein the slidable flange 40 is maintained in relation to the intumescent member 44 during expansion of the intumescent material (col. 4, lines 40-45) by means of an engagement member 45.

Regarding claim 2, Ehrenfels (abstract) discloses that the fixed flange 34 is located substantially at an upper terminal end of the conduit body 30.

Regarding claim 4, Ehrenfels (abstract) discloses that the retention member 36 is taken from the group consisting of adhesives, threads, snaps, wires, catches, fasteners, screws, nails, tacks, rivets, staples, friction detents and friction fittings.

Regarding claim 5, Ehrenfels (abstract) discloses that the retention member 36 comprises a slot (figure 1).

Regarding claim 6, Ehrenfels (abstract) discloses that the engagement member 45 is taken from the group consisting of adhesives, threads, snaps, wires, catches, fasteners, screws, nails, tacks, rivets, staples, springs, friction detents and friction fittings.

Regarding claim 7, Ehrenfels (abstract) discloses that the engagement member 45 comprises cooperating members (figure 1) associated with the slidable flange 40 and the intumescent member 44.

Regarding claim 8, Ehrenfels (abstract) discloses that the cooperating engagement members (figure 1) comprise one or more receptacles 47 on the intumescent member 44 which receive one or more cooperating detents on said slidable flange 40.

Regarding claim 9, Ehrenfels (abstract) discloses that the intumescent member 44 comprises one or more additional apertures (figure 1).

Regarding claim 10, Ehrenfels (abstract) discloses that the intumescent member 44 is formed entirely of one or more intumescent materials (col. 4, lines 40-45).

Regarding claim 11, Ehrenfels (abstract) discloses that the fixed flange 34 is a plate having an opening (figure 1) in alignment with the conduit 30.

Regarding claim 12, Ehrenfels (abstract) discloses that the fixed flange 34 is permanently affixed to the conduit 30.

Regarding claim 13, Ehrenfels (abstract) discloses that the slidable flange 40 comprises an opening (figure 1) corresponding to an exterior dimension of the conduit 30 to allow the slidable flange 40 to slide on the conduit 30.

Regarding claim 14, Ehrenfels (abstract) discloses that the conduit body 30 further comprises a stop member.

Regarding claim 15, Ehrenfels (abstract) discloses that the stop member 54 is taken from the group consisting of a raised area on the conduit and detents, flanges, collars, posts and extensions permanently attached to the conduit.

Regarding claim 16, Ehrenfels (abstract) discloses that the stop member 54 is permanently attached to the conduit 30 in a location corresponding to the thickness of a four hour rated fire floor 20.

Regarding claim 17, Ehrenfels (abstract) discloses that the conduit 30 and the fixed flange 34 are maintained in a permanently affixed or integral arrangement.

Art Unit: 2831

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrenfels in view of Rhodes et al. (4,264,779 cited by Applicant).

Regarding claim 3, Ehrenfels discloses the invention substantially as claimed including that the intumescent member 44 encircles at least a portion of the conduit body 30, but lacks that the intumescent member comprises at least two portions which encircle the fixed flange.

Rhodes et al. (col. 4, lines 10-63) teaches that the intumescent member comprises at least two portions (127 and 128) which encircle the fixed flange 124.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Ehrenfels by providing that the intumescent member comprises at least two portions, which encircle the fixed flange in order to provide a thermal barrier in view of the teachings of Rhodes et al.

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### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kohaut U.S. Patent No. 4,458,460 discloses a poke-through electrical fitting including flanges and an intumescent member.

Art Unit: 2831

Lengyel et al. U.S. Patent No. 5,466,886 discloses a poke-through electrical fitting including flanges, clips, slots, an engagement member, and plate member.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anton B Harris whose telephone number is (571) 272-1976. The examiner can normally be reached on weekdays from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Dean Reichard, can be reached on (571) 272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

abh

3/18/05

 3/21/05  
DEAN A. REICHARD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800

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